

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 549

Performing Arts Center Funding

**SPONSOR(S):** Randolph

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 1062

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	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
1)	Economic Development Policy Committee	14 Y, 0 N, As CS	Kruse	Kruse
2)	Finance & Tax Council			
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

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**SUMMARY ANALYSIS**

Section 212.20, F.S., provides for the Department of Revenue to turn over all funds received and collected to the Chief Financial Officer to be credited to the General Revenue fund of the state. The statute allows for certain proceeds to be redistributed back to organizations such as the professional golf hall of fame, the International Game Fish Association World Center facility, and any organization designated as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise." These organizations receive monthly distributions in the amounts of \$166,667, \$83,333, and \$166,667, respectively.

The bill amends current law to create a mechanism to add an additional distribution under section 212.20(6)(d)6., F.S., to each applicant certified as a performing arts center under section 288.1163, F.S., should the Legislature provide funding.

The bill creates s. 288.163, F.S., to provide the administration, eligibility, distributions, and use of the funds to be distributed to qualifying performing arts centers.

The bill has no fiscal impact.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

Section 212.20, F.S., provides for the Department of Revenue to turn over all funds received and collected to the Chief Financial Officer to be credited to the General Revenue fund of the state. The statute allows for certain proceeds to be redistributed back to organizations such as the professional golf hall of fame, the International Game Fish Association World Center facility, and any organization designated as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise." These organizations receive monthly distributions in the amounts of \$166,667, \$83,333, and \$166,667, respectively.

There are several performing arts centers that could be affected by the bill's passage. The Broward Center for the Performing Arts opened its doors on February 26, 1991. The governing body is the Performing Arts Center Authority which is a 13-member volunteer board. Members are appointed to a four-year term and represent every region of Broward County. The Broward Performing Arts Foundation, Inc., is the fund-raising organization for the Center. This not-for-profit charitable foundation, composed of business and community leaders, plays a critical role in supporting the Center. The Foundation is a 501(c) 3 charitable corporation with IRS approval. Directors serve three-year staggered terms. The Center features Broadway Shows, the Miami City Ballet, operas, symphonies, and various other musical concerts.

The Center is currently launching a \$40 million capital campaign to increase visitor traffic to their facility. The Center expects \$40 million in total costs, of which \$24 million will be for construction. The Center expects the project to generate approximately 800 full or part-time jobs.

The Orlando Dr. Phillips Performing Arts Center (DPAC) is a new performing arts center for downtown Orlando that was first proposed in 2003. Construction was started in the fall of 2009. It is scheduled to replace the Bob Carr Performing arts Centre in 2012. The governing body, DPAC's Board of Directors, is a volunteer board with 34 members including 8-member executive board, and 6 ex-officios. Currently, the Bob Carr Performing Arts Centre is home to the Orlando Philharmonic Orchestra, Florida Symphony Youth Orchestra, the former Orlando Opera, and a variety of other shows, exhibits, and events. DPAC expects the project to have a \$425 million total project cost, of which \$207 million is to be spent on construction. The project has spent \$80 million to date. DPAC expects to create 4,000 full or part-time jobs from the construction phase and 1,500 for operations.

## Effect of Proposed Changes

The bill amends current law to create the mechanism to add an additional distribution under section 212.20(6)(d)6., F.S., to provide that \$1.00 will be distributed annually to each applicant certified as a performing arts center under section 288.1163, F.S., as a placeholder should the Legislature decide to provide funding.

The bill creates s. 288.163, F.S., to provide the administration, eligibility, distributions, and use of the funds to be distributed to qualifying performing arts centers.

### Administration and Definitions

The Office of Tourism, Trade, and Economic Development (OTTED) is designated by the bill to serve as the state agency for screening applicants for state funding and for certifying an applicant as a performing arts center that is eligible for funding. The bill defines "performing arts center" to mean a facility consisting of one or more theatres, each of which has no more than 3,500 seats, that presents live theater, live opera, live ballet, or other performance and that is owned by a public entity or a not-for-profit organization and is operated by a public entity or a not-for-profit organization. OTTED shall notify the Department of Revenue of any facility certified by the office as a performing arts center that is eligible for funding.

### Eligibility Criteria

In order for the Office to certify an applicant as a performing arts center eligible for funding under s. 212.20(6)(d)6.e, the applicant must provide the Office with the following:

(a) Proof that a unit of local government or a not-for-profit organization is responsible for the construction, maintenance, or operation of the performing arts center or holds title to or a leasehold interest in the property on which the performing arts center is located and that the applicant is or will be the owner, tenant, or operator of the performing arts center.

(b) Projections that demonstrate that the performing arts center will attract a paid attendance of more than 150,000 annually.

(c) An independent analysis or study which demonstrates that the effect on the economy of the local community as a result of the construction or renovation and the operation of the performing arts center, as well as revenues projected to be generated by the taxes imposed under chapter 212 with respect to the use and operation of the performing arts center and events and activities on center premises will exceed \$60 million over thirty years.

(d) Demonstrate that it has provided, is capable of providing, or has financial or other commitments to provide more than one-half of the costs incurred or related to the improvement and development of the facility.

(e) A resolution passed, after a public hearing, by the municipality or county in which the performing arts center is located which certifies that funding under s. 212.20(6)(d)6.e for the performing arts center serves a public purpose

An applicant certified for distributions may not apply for further distributions.

### Distributions

Beginning fiscal year 2012-2013, no more than two facilities may be certified as performing arts centers. Only the two projects described in the Present Situation section are known to be ready for eligibility. At least one of these projects is already under way and therefore the "incentive" value of the proposed bill is unknown. The distributions in current law for professional sports franchises are meant to act as incentives to attract or retain sports franchises. Beginning fiscal year 2015-2016, up to eight facilities may be certified as performing arts centers.

Distributions begin 60 days after such certification and shall continue for not more than 30 years. An applicant certified pursuant to s. 288.163, F.S., may not receive more in distributions than actually expended by the applicant for the public purposes provided for in s. 288.163(5), F.S. In no case shall begin before July 1, 2012.

### Uses of Funds

An applicant certified as a performing arts center and certified for funding may use funds provided pursuant to that sub-sub-subparagraph solely for the public purposes of:

(a) Paying for the acquisition, construction, reconstruction, renovation, capital improvement, or maintenance of the performing arts center or any ancillary facilities, including, but not limited to, parking structures, meeting rooms, and retail and concession space.

(b) Paying or pledging for the payment of debt service on, or funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect to, bonds or other indebtedness issued for the acquisition, construction, reconstruction, renovation, or capital improvement of the performing arts center or any ancillary facilities, issued on or after January 1, 2009.

(c) Reimbursing costs for refinancing bonds or other indebtedness, including the payment of any interest and prepayment premium or penalty on such indebtedness, issued for the acquisition, construction, reconstruction, renovation, or capital improvement of the performing arts center or any ancillary facilities.

### Oversight and Audits

The Department of Revenue may conduct audits as provided in s. 213.34, F.S., to verify that the distributions made under this section have been expended as required in this section. If the department determines that the distributions made under this section have not been expended as required by this section, the department may pursue recovery of the funds under the laws and rules governing the assessment of taxes.

### Application Procedures

The Office of Tourism, Trade, and Economic Development is authorized to create procedural rules for receiving and processing applications for funding pursuant to s. 212.20(6)(d)6.b.(II), F.S.

The bill provides an effective date of July 1, 2010.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 220.20, F.S., to provide a new distribution to qualifying performing arts centers.

Section 2. Creates s. 288.163, F.S., to establish the parameters of the distribution program.

Section 3. Provides an effective date of July 1, 2010.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

#### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Should the Legislature decide to provide funding, performing arts centers that meet the conditions of the bill may be able to expand their operations.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None. The bill provides OTTED with authority to establish procedural rules to receive and process application for certification.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Economic Development Policy Committee adopted a strike-all amendment, which:

- Removed the fiscal impact.
- Provides that only two performing arts centers may be certified between fiscal years 2012-2013 and 2014-2015. Beginning in fiscal year 2015-2016, up to eight centers may be certified.
- Revises the requirement that an applicant provide an analysis demonstrating that the revenues projected to be generated from certain taxes will equal or exceed \$250,000 to require that it show revenues will exceed \$60 million annually.
- Removes the \$2 million cap since the fiscal impact was removed.
- Requires an applicant to show that: a unit of local government or not-for-profit organization will own, rent, or operate, and be responsible for, the construction through operation of, the performing arts center; it will be able to provide the financing for more than one-half of the costs to be incurred.
- Requires that any debt incurred by an applicant that the distributions may affect must have occurred after January 1, 2009.
- Removes OTTED's rulemaking authority and provides OTTED authority to establish procedural rules for receiving and processing applications.

The bill was reported favorably and the analysis has been updated to reflect the committee substitute.